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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/807,254	07/09/01	IUZUN	1193-PCTUS00

HM42/0904

IP DEPARTMENT  
SCHNADER HARRISON SEGAL & LEWIS  
1600 MARKET STREET 36TH FLOOR  
PHILADELPHIA PA 19103

EXAMINER

PRYOR, A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED:

09/04/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/807,254

Applicant(s)

Sadik et al

Examiner

Alton Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 9, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-96 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 70-86 is/are allowed.
- 6) ☐ Claim(s) 1-6, 9, 12, 13, 15-19, 21, 24-32, 36, 37, 40, 42, 44-46, 48-62, 66, 67, 87, 89, 91-93 is/are rejected.
- 7) ☐ Claim(s) 7, 8, 10, 11, 14, 20, 22, 23, 33-35, 38, 39, 41, 43, 47, 63-65, 68, 69, 88, 90 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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***Claim Rejection under 35 U.S.C. 112, 2nd paragraph***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 51-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 51-61 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: What objects are the composition being applied to? Examiner assumes that food is one of the objects.

***Claims Rejections under 35 U.S.C. 102(b)***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6,24,25-32,36,37,40,46,49,50,62,66,67 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 06065016; 3/8/94. JP '016 teaches a method of treating roots of grasses (plants) with a composition comprising thymol or Laurus nobilis. See abstract. Although JP '016 does not teach that the composition is being applied to soil or that composition controls

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nematodes in soil, it is inherent that a composition applied to roots would also be delivered into the soil and that its application to soil would control pests growth in the soil as well as on the roots. In claims drawn to a composition, a statement directed to the intended use of the composition has no patentable weight.

Claims 87,89,91-<sup>96</sup>~~93~~ are rejected under 35 U.S.C. 102(b) as being anticipated by Fedin et al (SU 1685319; 10/23/91). Fedin teaches a method of treating plant (millet) seeds with a composition comprising cymene to control pests. See abstract.

***Claim Rejection under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,12,13,15-19,21,42,44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '016 above. See JP 35 U.S.C. 103(a) rejection above. JP '016 teaches all that is recited in claims 9,12,13,15-19,21,25-32,37,42,44,45,49 except for the composition / method comprising a) the instant amounts of components b) the instant formulations (spray, liquid) of the composition, c) the instant mode of application (fogging, irrigation water). In the absence of unexpected results, one having ordinary skill in the art would have determined the optimal amount of essential oil, the best formulations and the best mode of delivery. One would

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have been motivated to do this in order to make the most effective composition for controlling pest in soil or on plants.

*Telephonic Inquiry*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Patent Examiner, AU 1616

8/29/01